

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.1405 OF 2011

1. The State of Maharashtra
Through Collector,
Osmanabad.
2. The District Education and
Industrial Training Officer,
Tuljapur Road, Osmanabad. = **APPELLANTS**
(orig. Respondents)

VERSUS

Pandurang s/o Ganpatrao Bagade
Age: 68 Yrs., occu. Agril.
R/o Bhoom, Dist.Osmanabad. = **RESPONDENT**
(orig. Claimant)

Mr. PM Kulkarni, AGP for Appellants;
Mr. DA Mane, Advocate for Respondent.

CORAM : P.R.BORA, J.
DATE : 7th February, 2019

ORAL JUDGMENT

1. The State has preferred the present appeal against judgment and award passed in LR No.153/1997 by Civil Judge, Senior Division, Osmanabad, vide judgment delivered on 30th July, 2007.

2. Land owned by the present respondent, admeasuring 2 hectares situated at village Bhoom, was acquired by the State for establishment of the Industrial Training Institute at Bhoom. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) in that regard was

published in the official gazette on 30th September, 1993 whereas Award under Section 11 of the Act came to be passed on 14th September, 1995. The Special Land Acquisition Officer had offered the compensation to the respondent, who is hereinafter referred to as the claimant, @ Rs.2,00,000/- per hectare, i.e. @ Rs.2,000/- per Are. Dissatisfied with the amount of compensation so offered, the claimant preferred an application under Section 18 of the Act, which was adjudicated by the court of Civil Judge, Senior Division, Osmanabad. The said court is hereinafter referred to as the Reference Court. In the Reference Application, the claimant had claimed compensation @ Rs.10/- per sq.ft. In order to substantiate the claim so raised, in addition to his testimony, the claimant had placed on record three sale instances. The claimant also examined one witness viz. Sampat Yashwantrao Suryawanshi in order to substantiate the defence raised by him. The learned Reference Court, after having assessed the oral and documentary evidence brought on record before it, enhanced the amount of compensation by determining the market value of the acquired land @ Rs.5/- per sq.ft. The Reference Court also held the claimant entitled for the statutory benefits as well as interest under the provisions of the Act. Aggrieved by, the State has preferred the

present appeal.

3. Shri Kulkarni, learned AGP appearing for the State, challenged the impugned judgment and award mainly on the ground that relying on the sale instances, which cannot be held to be of comparable lands, the Reference Court has arbitrarily enhanced the amount of compensation @ Rs.5/- per sq.ft. The learned AGP submitted that the Special Land Acquisition Officer had, in fact, correctly determined the market value of the acquired land and has accordingly offered the amount of compensation and no interference was required in the amount of compensation so offered. The learned AGP in the circumstances prayed for setting aside the impugned judgment and award and to restore the Award passed by the Special Land Acquisition Officer under Section 11 of the Act.

4. Shri Mane, learned counsel appearing for the respondent-claimant, supported the impugned judgment and award. The learned counsel submitted that the Reference Court has appropriately considered the sale instances brought on record by the claimant and by considering all plus and minus factors attached to the acquired land, has correctly determined its market value @ Rs. 5/- per sq.ft. The learned counsel in the circumstances prayed for dismissal of the appeal being devoid of any substance. The learned counsel further

submitted that in fact the State cannot now prosecute this appeal further in view of the policy adopted by it vide Government Resolution dated 3rd November, 2016 read with corrigendum dated 23rd February, 2017 and 13th August, 2018, in view of the fact that the amount of compensation enhanced by the Reference Court is less than four times of the market value as was offered by the Special Land Acquisition Officer. The learned counsel further submitted that when the Special Land Acquisition Officer had offered the compensation @ Rs.2,000/- per Are, the Reference Court has enhanced it to Rs.5,445/- per Are and as such, within the limits of four times, as prescribed in the aforesaid Government Resolution and Corrigenda. The learned counsel submitted that thus on both the counts, the appeal deserves to be dismissed.

5. I have given due consideration to the submissions made by the learned counsel papering for the State and learned counsel appearing for the respondent-claimant. Perusal of the impugned judgment reveals that three sale instances were for the consideration of the Reference Court for determining the market value of the acquired land. First sale instance was pertaining to 20 Ares land, which was sold on 13th April, 1992 for the consideration of Rs.88,000/-, i.e. @ Rs.4,400/- per Are. The second

sale instance was of the date 7th October, 1992 whereby the land admeasuring 3.5 Ares was sold for the consideration of Rs.50,000/-, i.e. @ Rs.14285/- per Are; whereas the third sale instance was pertaining to 2 Ares land which was sold on 29th January, 1993 for the consideration of Rs.20,000/-, i.e. @ Rs. 10,000/- per Are. The discussion made by the Reference Court reveals that the Reference Court has not relied upon the sale instances pertaining to lands admeasuring 3.5 Ares and 2 Ares holding that they were small pieces of lands and on the basis of the said instance pertaining to the said small pieces of land, the market value of the acquired land which was admeasuring 2 hectares, could not have been determined. The Reference Court has preferred to rely upon the sale instance pertaining to 20 Ares land and the discussion made by the Reference Court goes to suggest that by working out all relevant factors, it has ultimately determined the market value of the acquired land @ Rs.5,445/- per Are. After having considered the entire material on record, it does not appear to me that the Reference Court has committed any error in determining the market value of the acquired land at the said rate. I, therefore, do not see any reason to cause any interference in the impugned judgment and award passed by the Reference Court. As was contended by the

learned counsel Shri Mane, appearing for the claimant, even otherwise, the State could not have prosecuted this appeal further in view of the aforesaid Government Resolution and Corrigenda, in view of the fact that the amount of compensation as was enhanced by the Reference Court was within the limits of four times of the market value as was offered by the Special Land Acquisition Officer. It is thus evident that on merits as well as on the above count also, the appeal deserves to be dismissed. Hence, the following order, -

ORDER

- i. The appeal is dismissed without any order as to costs.
- ii. The amount deposited, if any, by the State in the present appeal in this Court, is permitted to be withdrawn by the respondent-claimant along with interest accrued thereon, if already not withdrawn.
- iii. Pending civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/